

Interested Persons Meeting: Topical Summaries

Morning Program (10:00am to noon)

(1) Commission Advice Procedure--sections 87300-87306 (Conflict of Interest Codes).

Pursuant to Government Code section 87301, it is the policy of the Act that conflict of interest codes shall be formulated at the most decentralized level possible. In accordance with this policy, the Commission is considering a regulation to codify the advice procedure regarding conflict of interest codes as it applies to agencies, code reviewing bodies and individuals. Some of the concepts to be addressed are summarized below.

Agencies: The Commission will consider limiting the rendition of advice or informal assistance to local government agencies if the advice or informal assistance is regarding the provisions of Government Code section 87302 unless:

- The agency has requested advice from its code reviewing body and the code reviewing body consents to the request.
- The agency and its code reviewing body jointly submit a written request. However, the Commission may only advise the code reviewing body directly.

Individuals: The Commission will render advice to an individual regarding the provisions of Government Code section 87302 only when:

- The individual requests advice regarding obligations in a conflict of interest code in cooperation with his or her agency or code reviewing body.
- The advice is regarding a determination of whether the individual is a public official for purposes of the conflict-of-interest disqualification provisions of Government Code sections 87100 and 87103 or subject to the gift limits in section 89503.
- The Commission will also render advice to a public official who is subject to Government Code section 87200, even where the question may be mixed with a question under Government Code section 87302. Advice rendered that an individual is not a “public officials who manages public investments” pursuant to section 87200 is not deemed a determination that the individual must file a disclosure statement under a conflict of interest code. That determination must be made by the agency or code reviewing body.

The Commission will also consider requiring that requestors be prepared to submit such items as the following:

- A copy of all pertinent agency determinations regarding the individual’s obligations under Chapter 7 of the Act;
- A copy of an individual’s employment contract;

- A copy of the individual's duty statement; and
- Any other pertinent information.

Interested persons may contact the Commission by letter at the address listed above. If you have any questions on the meeting, please call Jill Stecher at (916) 322-5660.

(2) 2002/03 Statement of Economic Interests (Form 700).

- Form 700—Statement of Economic Interests. The form and instructions have been revised for the 2002/03 filings.
- Form 700 Certification. This form has been updated for use by officeholders running in early 2003 elections.
- Form 700-A—Statement of Economic Interests for Auditors, Claims Managers/Adjusters. Under regulation 18733, state auditors and other specified employees may be assigned disclosure different from other designated employees. Various forms used by the State Compensation Insurance Fund, the Franchise Tax Board, and the Board of Equalization have been updated and consolidated into a single form.
- Form 700-U—Statement of Economic Interests for Principal Investigators. Under regulation 18702.4(c), employees who make academic decisions for the University of California and the California State University have limited disclosure obligations. Their Form 730-U and instructions have been updated and renamed Form 700-U.
- Note that the gift limit threshold is being adjusted effective January 1, 2003. This is reflected in the draft form. However, since the final figures are not yet available, we have included an approximate figure in the draft form.

Afternoon Program (1:30pm to 4:00pm)

(3) Campaign Disclosure Forms.

- Form 410—Statement of Organization. The form instructions have been revised to incorporate various Proposition 34 changes, such as redesignation and termination of committees controlled by state candidates, legal defense funds, ballot measure committee names, etc., and to incorporate a legislative amendment to section 84101 (Ch. 901, Stats. 2001).
- Form 461—Major Donor and Independent Expenditure Committee Campaign Statement. This form has been revised to remove outdated instructions for disclosing per election cumulative amounts related to special elections. Other clarifying revisions have been made to the instructions, including filing locations.

- Form 496—Late Independent Expenditure Report. SB 2095 (Chapter 511, Stats. 2002) requires the Secretary of State to link electronic information disclosed pursuant to section 85500 to the candidate or measure being supported or opposed. The Form 496 has been revised to more clearly provide for disclosure of candidate district numbers, as required by section 84204(b).
- Form 497—Late Contribution Report. SB 1741 (Chapter 211, Stats. 2002) requires the recipient of a late contribution to disclose whether the contribution is a loan. The Form 497 has been revised to provide a check-box for this purpose.
- Form 501—Candidate Intention. The form and instructions have been revised to delete the expenditure ceiling amounts. Removing the amounts will avoid the need for future form changes when the expenditure ceilings increase.

If you have questions or comments on the forms that are to be discussed in either the morning or afternoon session, please contact Lynda Cassady or me at (916) 322-5660.

(4) Guidelines Defining Coordination with Candidates and Committees.

The purpose of this meeting is to solicit public input on the development of a regulation that will assist in determining when an expenditure is made “at the behest of,” or in coordination with, a candidate or committee.

Third-party expenditures on campaign advocacy are generally regarded as “contributions” when made to, at the behest of, or otherwise in coordination with, a candidate or committee. Contributions may be limited by law, and must be reported more fully than similar expenditures made independently of candidate or ballot measure committees.

California has seen a dramatic rise in third-party campaign expenditures over the past decade. Because “contributions” are treated differently than campaign expenditures made independently of a candidate or committee – state candidates are subject to contribution limits, for example – Commission staff is developing criteria for distinguishing contributions from expenditures not made at the behest of, or in coordination with, candidates or committees.

The crucial distinction between an expenditure that would be considered a contribution, and a similar expenditure that would not be so classified, is often the presence or absence of “coordination” between the person making the payment and the person receiving the benefit of the expenditure. At present, regulation 18215(a)(2) defines “contribution” (in pertinent part) as a payment received by or made *at the behest of* a candidate, a controlled committee, an official committee of a political party, or an organization formed or existing primarily for political purposes. Regulation 18225.7 explains when an expenditure is made “at the behest of” a candidate or controlled committee, as follows:

“(a) ‘Made at the behest of’ means made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of. Such arrangement must occur prior to the making of a communication described in Government Code Section 82031.

“(b) An expenditure is presumed to be made at the behest of a candidate or committee if it is:

“(1) Based on information about the candidate’s or committee’s campaign needs or plans provided to the expending person by the candidate, committee, or agents thereof; or

“(2) Made by or through any agent of the candidate or committee in the course of their involvement in the current campaign.

“(c) An expenditure is not made at the behest of a candidate or committee merely when:

“(1) A person interviews a candidate on issues affecting the expending person, provided that prior to making a subsequent expenditure, that person has not communicated with the candidate or the candidate’s agents concerning the expenditure; or

“(2) The expending person has obtained a photograph, biography, position paper, press release, or similar material from the candidate or the candidate’s agents.”

The Commission seeks public comment on:

- Whether existing regulation 18225.7 clearly and fully defines the kinds of cooperative behavior generally referred to as “coordination”;
- Should the scope of a revised regulation be limited to expenditures on communications containing “express advocacy,” or should the regulation consider *all* coordinated expenditures that may be treated as contributions;
- Are there alternative design strategies for a regulation in this area and, in particular, is it possible to fashion an exhaustive list of activities deemed to be “coordination”;
- Would the regulations of another jurisdiction, whether state, local, or federal, provide useful guidance to the Commission;
- Can the expertise of particular groups, such as enforcement authorities, campaign consultants or candidates, be brought to bear on this problem;
- Any other matter pertinent to distinguishing coordinated campaign activities from independent expenditures.
- Under what circumstances should a candidate controlled committee and a ballot measure committee be treated differently?

Draft language for a proposed new regulation may be presented at the meeting. Interested persons may contact the Commission by letter at the address listed above. If you have any questions on the meeting, please call Lawrence T. Woodlock at (916) 322-5660.